

# T<sup>3</sup>: Trustee Training Tips

Winter 2006

Kentucky Department for Libraries & Archives

Number 7 Volume 4

## REVISITING OMA

The Open Meetings Act (OMA) was the subject of a training session for KDLA's Field Services consultants in early December. Some of the information presented may be old news, some may be new news, and some may be a new understanding of old news. What makes it all significant, however, is that Opinions of the Attorney General have the force of law in matters concerning OMA and ORA (Open Records Act). Presented below are items directly from to AG's office, provided by the OMA/ORA specialist, Amye Bensenhaver.

Found in KRS 61.805-61.850, the purpose of the Open Meetings Act is to ensure that public officials are accountable to the general public and to encourage public participation in the decision-making processes of government at all levels. And public library boards are units of government. To this end, all library board meetings must be at a time and place convenient to the public, and those times and places must be advertised: once a year for the regularly scheduled ones; at least 24 hours in advance of special called meetings.

Committees of the board are also public meetings. We in the library community had labored under the impression that as long as there was no quorum of the board sitting on a committee, that was not a board meeting and, therefore, exempt. That is not the case. Anytime library business is discussed, whether by the library board or a committee appointed by the board, it is subject to the OMA to the same extent as the board itself (OAG 78-496).

Members of a library board attending a conference, workshop, visiting another library, etc. strictly for the purposes of training or learning about new library options, even though a quorum may be present, are not subject to the OMA. However, trustees are not allowed to discuss library business that should be discussed in open meetings. You may discuss what you learned and how you might apply it, but only in a general sense; no decisions may be made until they are discussed in an open meeting of the library board.

Actions taken at an illegal meeting can be declared null and void. What makes a meeting illegal?

- being in closed session inappropriately;
- conducting a special called meeting inappropriately;
- making decisions without a quorum of the board present;
- allowing members of the board who are not legally appointed to count toward the quorum;
- allowing members of the board who are not legally appointed to make motions and/or vote on decisions of the board.

--continued on page 2

Being in a closed session inappropriately can take several forms. Most obvious is closing for a reason that is not allowed. KRS 61.810 allows several reasons, but the ones that are common to library boards are (b) involving the sale or purchase of property; (c) involving litigation; and (f) matters of personnel leading to hiring, firing, or disciplining a particular employee.

In addition, failure to announce under what authority a board is closing a session is a violation. The KRS number in full must be stated for the record (and recorded in the minutes of the open meeting) as well as a summary of the purpose, and the time of the closing. For example, the President may call a closed session by saying something like, “The XYZ Library Board will go into closed session at 7:28 PM, under KRS 61.810, Section One, Subsection f [written as KRS 61.810(1)(f)], to discuss hiring a new director.” Once the closed session is over and the board returns to open session, the time is recorded again, along with an announcement of the outcome.

As no action can be decided in a closed session, if the trustees discussed—in our example—the hiring of a new director but reached no decision, then all that need be recorded is that “no decision was made.” If, however, the board agreed that John Doe is person to whom they wish to offer the position, then the President calls for a motion, a second, and a vote.

Procedural details for going into closed session are the same as other actions taken by the board. A motion is made, seconded, and carried by a majority vote—with the statute citation and brief reason stated. Closed sessions are for the board members only; public, press, director, etc. leave the room. The board may invite those it deems necessary for advice—its attorney and/or its Regional Consultant. The information dis-

closed during a closed session is confidential and should never be discussed with others.

Conducting a special called meeting is as strictly proscribed as a closed session (KRS 61.825). Two parts are required by law: (1) public notice must be made at least 24 hours in advance; and (2) the agenda of the meeting must be posted and cannot be deviated from. Let’s look at each in more detail.

Public notice means posting a notice in a conspicuous place in the library and where the meeting is to take place if it is somewhere else. Whether or not local media must be contacted depends upon whether or not they have formally asked to be notified. Of course there is nothing wrong with notifying them even if they haven’t asked—in fact, it is a good thing and in keeping with the *spirit* of the OMA.

The agenda of the special called meeting must be posted as well, but even more importantly, the board is mandated to discuss only those items on this agenda. And there is no wiggle room allowed with vague agenda items such as “other” or “miscellaneous” or simply “business.” For a called meeting the agenda must describe what business is to be discussed in enough detail for a member of the public to get the idea.

Of course the trustees and others who regularly attend, such as your Regional Consultant, must be notified. The board members themselves must be notified by mail, fax, or hand delivery. The law does not allow trustee notice by email or phone call.

A special meeting may be called at any time by the board president or by a majority of the trustees.

The issue of a quorum refers to the ability of a board to conduct business. If less than a

quorum attend a meeting, it should be rescheduled for later in the month. Library statutes require boards to meeting once a month, so here is a good reason not to have the fourth week as a regular meeting time; it limits considerably other options for rescheduled meeting dates. If the board cannot get a quorum before month's end, it will count the attempted meeting as its monthly meeting and those not in attendance will be recorded as absent. The minutes of such a meeting will simply state that the board met but could not conduct business without a quorum present.

What makes some trustees not eligible to be counted toward a quorum or to vote? They weren't appointed in the manner prescribed by law. They have resigned by virtue of missing four meetings in one term year. They are actually advisory board members and not voting members of the legal board. They are not in the meeting visually and vocally—meaning telephone attendance is not acceptable; video conferencing is. The idea is that both their faces must be seen and their voices heard.

A murky issue that has clouded discussions about rescheduled regular monthly meetings has been clarified. While changing *anything* about the regular meeting—time, date, location—creates the necessity of conducting the meeting under the rules of a special called meeting (see above), the library statute on attendance is still valid. This means rescheduled meetings require public notice be made, trustees be informed by allowable methods, the agenda be posted, and only those items listed and annotated on the agenda be discussed. These rescheduled monthly meetings, though *conducted* as though they are special called meetings, are treated as the regular monthly meeting for the purposes of satisfying the statute requiring monthly meetings and trustee attendance.

## TRUSTEE ATTENDANCE

There is frequent confusion about the issue of trustee attendance: what counts and what doesn't. First of all, there are no excused or unexcused absences—one is either there or not there. It does not matter whether or not the absences are consecutive or spread out over the year. Each trustee is allowed up to three misses per term year of the regular monthly meetings. Missing additional called meetings does not count against the trustee's attendance record. Missing a rescheduled monthly meeting does count.

Another frequent misunderstanding concerns the definition of a term year. This is the 365-day (366 in leap years) period between when a given board's terms start and end—not from an individual trustee's appointment date. All board members on a board will have the same term year beginning. A term year might follow the fiscal year and be July 1 to June 30. Or it might be a calendar year and run January 1 to December 31. Or it might be anything: November 4 to November 3; September 15 to September 14; April 26 to April 25, etc.

***T<sup>3</sup>:Trustee Training Tips*** is published quarterly by the Field Services Division of the Kentucky Department for Libraries and Archives. Correspondence should be addressed to the editor, Nelda Moore, at Lincoln Trail Regional Office, 201 West Dixie Avenue, Suite One, Elizabethtown 42701-1533. Phone 270.766.5222; Fax 270.766.5273; e-mail: nelda.moore@ky.gov.

*Serving Kentucky's Need to Know*



An agency of the Education Cabinet

## **LIBRARY LETTERS**

*Dear Marian Librarian,*

*When we go into a closed session, do we keep minutes? If we do, what do we do with them since our session is supposed to be confidential?*

*-- Troubled Trustee*

Dear Troubled,

As no action may be taken other than in an open meeting, there is no need to take minutes during the closed session. If a board should desire minutes, they may be taken, but you are right in thinking they are not made public. If such minutes exist, they are not subject to the Open Records Act and should not be kept with the open meeting minutes. They should not be given to the library director. They should be kept by the Secretary in a private place. Given all the restrictions, perhaps it might behoove a board to forgo keeping minutes that aren't required.

## **DID YOU KNOW?**

The Kentucky Library Trustee Round Table is sponsoring a scholarship for one trustee member to attend the 2007 American Library Association Conference in Washington, DC in late June. This is the second annual scholarship, and it makes a wonderful opportunity for a trustee from a small-budgeted library to obtain funds for a relatively expensive conference. This event promises some excellent sessions for additional trustee training from experts across the country.

Enclosed in this edition of *T3: Trustee Training Tips* is an application for the ALA Annual Conference Scholarship. If you are interested in applying, fill out the application as directed and submit it by the deadline.

The KLTRT Scholarship Committee will evaluate the applications and determine the winner. Good luck to all.

**Kentucky Department for Libraries  
and Archives  
201 West Dixie Avenue, Suite One  
Elizabethtown KY 42701-1533**

